**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Amendment of Part 97 of the Commission's Rules | ) | WT Docket No. 05-235 |
| To Implement WRC-03 Regulations Applicable to | ) | |
| Requirements for Operator Licenses in the | ) | RM-10781, RM-10782, RM-10783, |
| Amateur Radio Service | ) | RM-10784, RM-10785, RM-10786, |
| | ) | RM-10787, RM-10805, RM-10806, |
| | ) | RM-10807, RM-10808, RM-10809, |
| | ) | RM-10810, RM-10811, RM-10867, |
| | ) | RM-10868, RM-10869, RM-10870 |
| | ) | |
| Amendment of the Commission's Rules | ) | WT Docket No. 04-140 |
| Governing the Amateur Radio Services | ) | |

# REPORT AND ORDER AND ORDER ON RECONSIDERATION

**Adopted: December 15, 2006** **Released: December 19, 2006**

By the Commission:

## TABLE OF CONTENTS



## I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Report and Order and Order on Reconsideration* (*R&O*), we address comments received in response to a *Notice of Proposed Rule Making and Order* (*NPRM*) in this proceeding, released by the Commission on July 19, 2005, which sought comment on proposed revisions to the

Commission's Amateur Radio Service rules.[1] The *NPRM* addressed eighteen petitions for rulemaking.[2] Generally, the *NPRM* proposed to eliminate the requirement that an individual must pass an international Morse code[3] telegraphy examination[4] in order to qualify for any amateur radio operator license.

2. As discussed below, this *R&O* implements the proposals set forth in the *NPRM*. Specifically, we will amend our Amateur Radio Service rules by:

- revising the examination requirements for obtaining a General Class or Amateur Extra Class amateur radio operator license; and

- revising the operating privileges for Technician Class licensees to include the operating privileges that are authorized to Novice Class licensees.

3. We conclude that these actions will further the public interest by removing unnecessary requirements from our Rules. Moreover, we believe that these changes will (1) encourage individuals who are interested in communications technology, or who are able to contribute to the advancement of the radio art, to become amateur radio operators; and (2) eliminate a requirement that may discourage

[1] Amendment of Part 97 of the Commission's Rules to Implement WRC-03 Regulations Applicable to Requirements for Operator Licenses in the Amateur Radio Service, *Notice of Proposed Rule Making and Order*, WT Docket No. 05-235, 20 FCC Rcd 13247 (2005) (*NPRM*).

[2] *See* RM-10781, Peter M. Beauregard, Petition for Rulemaking (filed July 15, 2003) (Beauregard Petition); RM-10782, P.V. Coppola *et al.*, Petition for Rulemaking (filed July 18, 2003) (Coppola Petition); RM-10783, Kiernan K. Holliday, Petition for Rulemaking (filed July 21, 2003) (Holliday Petition); RM-10784, Dale E. Reich, Petition for Rulemaking (filed July 28, 2003) (Reich Petition); RM-10785, Eric R. Ward, Petition for Rulemaking (filed July 30, 2003) (Ward Petition); RM-10786, No Code International (NCI), Petition for Rulemaking (filed August 13, 2003) (NCI Petition); RM-10787, National Conference of Volunteer Examiner Coordinators (NCVEC), Petition for Rulemaking (filed August 1, 2003) (NCVEC Petition I); RM-10805, Charles L. Young, Jr., Petition for Rule Making (filed September 5, 2003) (Young Petition); RM-10806, Frank W. Napurano, Petition (filed August 14, 2003) (Napurano Petition); RM-10807, Robert G. Rightsell and Harry A.M. Kholer, Petition for Rulemaking (filed September 5, 2003) (Rightsell-Kholer Petition); RM-10808, Joseph Speroni, Petition for Rulemaking (filed September 8, 2003) (Speroni Petition); RM-10809, Puerto Rico Amateur Radio League, Petition for Rulemaking (filed September 11, 2003) (PRARL Petition); RM-10810, James Roux, Petition for Rule Making (filed September 11, 2003) (Roux Petition); RM-10811, FISTS CW Club, Petition for Rulemaking (filed September 2, 2003) (FISTS Petition); RM-10867, American Radio Relay League, Inc. (ARRL), Petition for Rulemaking (filed March 18, 2004) (ARRL Petition); RM-10868, Radio Amateur Foundation (RAF), Petition for Rule Making (filed February 20, 2004) (RAF Petition); RM-10869, Ronald D. Lowrance, Petition (filed September 8, 2003) (Lowrance Petition); and RM-10870, NCVEC, Petition for Rulemaking (filed March 4, 2004) (NCVEC Petition II).

[3] *See* 47 C.F.R. §§ 97.3(a)(27), 97.503(a). The international Morse code is defined in ITU-T Recommendation F.1 (March, 1998), Division B, I. Morse code. It consists of alphanumeric characters represented by dots, dashes, or some combination thereof.

[4] The telegraphy examination requires an examinee to listen to an audio recording of a message that is typically exchanged between two amateur radio stations and demonstrate, either by transcribing the message text or answering a series of questions based on the content of message, that he or she has the ability to receive correctly Morse code texts at not less than five words-per-minute (wpm). The message is prepared in such a way that it uses all of the letters of the alphabet, the numerals 0-9, certain punctuation marks, and three prosigns (symbols formed by combining together two letters into one without the inter-letter space). *See* 47 C.F.R. §§ 97.503(a), 97.507(d). A "word" consists of five letters, with each numeral, punctuation mark, and prosign counting as two letters. *See* 47 C.F.R. § 97.507(d). For purposes of this *R&O*, phrases such as "Morse code test," "telegraphy examination," and "telegraphy examination in the international Morse code" are used interchangeably.

amateur service licensees from advancing their skills in the communications and technical phases of amateur radio.

4. In addition, in order to further address concerns of the amateur radio community, we take this opportunity to resolve a petition filed by the American Radio Relay League, Inc. (ARRL) for partial reconsideration of the *Report and Order* in WT Docket No. 04-140 (the *Phone Band Expansion* proceeding), which the Commission released on October 10, 2006.[5] Among other actions, the Commission authorized amateur stations to transmit voice communications on additional frequencies in certain amateur service bands, including expanding the 75 meter (m) band, which is authorized only for certain wideband emissions, from 3750-4000 kHz to 3600-4000 kHz, and commensurately reducing the 80 m band, which is authorized only for certain narrowband emissions, from 3500-3750 kHz to 3500-3600 kHz. The ARRL argues that the 75 m band should not have been expanded below 3635 kHz, in order to protect automatically controlled digital stations operating in the 3620-3635 kHz portion of the 80 m band. We conclude that these operations can be protected by providing alternate spectrum in the 3585-3600 kHz frequency segment.

## II. BACKGROUND

5. The Commission's rules define the Amateur Radio Service as "the amateur service, the amateur-satellite service, and the radio amateur civil emergency service (RACES)."[6] The amateur service is available to persons who are interested in radio technique solely with a personal aim and without pecuniary interest.[7] It presents an opportunity for individuals to self-train in radio and communications technology and to carry out technical investigations.[8] Amateur radio operators also engage in voluntary, noncommercial communications with other amateur radio operators located in the United States and in foreign countries,[9] and form a group of trained operators who have the ability, on a voluntary basis, to assist the public by providing essential communications links and facilitating relief actions, particularly when a disaster or other emergency situation occurs or is likely to occur.[10]

6. The international *Radio Regulations* (*Radio Regulations*) require that operators of amateur service stations be licensed.[11] Prior to July 2003, the *Radio Regulations* required that any person seeking a license to operate an amateur radio station demonstrate proficiency in Morse code, but allowed

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[5] Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Report and Order*, WT Docket No. 04-140, 21 FCC Rcd 11643 (2006) (*Phone Band Expansion R&O*).

[6] *See* 47 C.F.R. § 97.3(a)(2). The amateur service and the amateur satellite service are separate radio services in the international *Radio Regulations*; RACES is a domestic radio service using amateur radio stations for civil defense communications during periods of local, regional or national civil emergencies. *See World Radiocommunication Conference Final Acts (Geneva, 2003)*, Article 25; 47 C.F.R. § 97.3(a)(37). Hereafter, the term "amateur service" is used to include all of the amateur radio services.

[7] *See* 47 C.F.R. § 97.3(a)(4).

[8] *See* 47 C.F.R. § 97.1.

[9] *See* 47 C.F.R. § 97.111(a)(1).

[10] *See* 47 C.F.R. § 97.1(a).

[11] *See World Radiocommunication Conference Final Acts (Geneva, 2003)* (*WRC-03 Final Acts*), Article 25.6. The *WRC-03 Final Acts* applicable to the amateur service became effective on July 5, 2003.

administrations[12] to waive this requirement for persons operating amateur radio stations using only frequencies above 30 MHz.[13] Thus, countries could issue "no code" amateur service operator licenses, *i.e.*, amateur service operator licenses that did not require the licensee to pass a telegraphy test, for stations using only amateur service frequencies above 30 MHz, while requiring demonstration of Morse code proficiency by persons holding an amateur operator license that authorized transmitting privileges on frequencies below 30 MHz.[14]

7. In 1990, the Commission removed the telegraphy examination requirement for the Technician Class operator license.[15] In 1999, the Commission adopted the *License Restructure Report and Order*,[16] which simplified the amateur service operator license structure on a going-forward basis to three classes of operator licenses -- the Technician Class, General Class, and Amateur Extra Class -- and streamlined the amateur radio operator examination system.[17] To comply with the then-effective *Radio Regulations*, the Commission continued to require a telegraphy examination requirement for the General Class and Amateur Extra Class operator licenses.[18]

8. The International Telecommunication Union (ITU), under the auspices of the United Nations, convened the 2003 World Radio Conference (WRC-03) from June 9 to July 4, 2003, in Geneva, Switzerland. The actions taken at WRC-03 were published as the *WRC-03 Final Acts*, and are codified

[12] An administration is any governmental department responsible for discharging obligations under the *Radio Regulations*. *See* 47 C.F.R. § 2.1.

[13] *See Final Acts of the World Radiocommunication Conference (WRC-97)*, Geneva, Switzerland, 1997, and *Final Acts of the World Radiocommunication Conference, (WRC-00)*, Istanbul, 2000, *Radio Regulation* 25.5. This *Radio Regulation* stated, "Any person seeking a license to operate the apparatus of an amateur station shall prove that he is able to send correctly by hand and to receive correctly by ear texts in Morse code signals. The administration concerned may, however, waive this requirement in the case of stations making use exclusively of frequencies above 30 MHz."

[14] Individual administrations were permitted to waive the Morse code requirement for stations making use only of frequencies above 30 MHz because transmissions in this part of the radio spectrum are generally used for shorter distance communications, rather than international communications. The segment of the radio spectrum between 3 and 30 MHz is commonly referred to as the High Frequency (HF) band. The segment of the radio spectrum between 300 kHz and 3 MHz is the Medium Frequency (MF) band. *See* 47 C.F.R. § 2.101.

[15] *See* Amendment of Part 97 of the Commission's Rules Concerning the Establishment of a Codeless Class of Amateur Operator License, *Report and Order*, PR Docket No. 90-55, 5 FCC Rcd 7631, 7632 ¶ 16 (1990).

[16] *See* 1998 Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules, *Report and Order*, WT Docket No. 98-143, 15 FCC Rcd 315 (1999) (*License Restructure Report and Order*) and *Errata*, April 19, 2000; *Memorandum Opinion and Order*, 16 FCC Rcd 8076 (2001).

[17] *See License Restructure Report and Order*, 15 FCC Rcd at 316 ¶ 3. Previously, the amateur service operator license structure consisted of six classes of operator licenses: the Novice, Technician, Technician Plus, General, Advanced, and Amateur Extra Class operator licenses. To transition to the three-class license structure, the Commission grandfathered then-current Novice, Technician Plus, and Advanced Class licensees, and decided that no new Novice or Advanced Class licenses would be issued. The Commission also decided to renew Technician Plus Class licenses as Technician Class licenses. *See id.* at 322 ¶¶ 13-15, 326 ¶ 20. Under this approach, these licensees would receive credit for examination elements previously passed when they upgrade to a higher class operator license. *See* 47 C.F.R. § 97.505.

[18] *See* 47 C.F.R. § 97.501.

in the ITU *Radio Regulations*.[19] At WRC-03, the international regulations applicable to the amateur service were revised in a comprehensive manner, resulting in more streamlined, updated regulations that reflect modern amateur radio communication techniques and technologies.[20] Among other things, the *WRC-03 Final Acts* amended Article 25 of the *Radio Regulations* to allow each country to determine whether it would require a person seeking an amateur radio operator license to demonstrate the ability to send and receive texts in Morse code signals.[21] The effect of this revision to Article 25 was to eliminate the international requirement that a person demonstrate Morse code proficiency in order to qualify for an amateur radio operator license with transmitting privileges on frequencies below 30 MHz.

9. On July 19, 2005, the Commission released the *NPRM* in this proceeding, and sought comment regarding proposals to change the Amateur Radio Service examination requirements.[22] Specifically, the Commission proposed to revise Section 97.501 of the Commission's rules[23] to remove the five wpm telegraphy examination from the examination requirements for the General Class and Amateur Extra Class operator licenses.[24] The Commission also considered various requests to authorize additional operating privileges to Technician and Novice Class licensees.[25] It declined requests that it authorize additional operating privileges to these licensees, noting that to do so would lessen the incentive for them to upgrade to a higher class operator license,[26] and that these licensees could earn more operating privileges than the petitions requested by passing one or two written examinations.[27] In response to the *NPRM*, we received over 3900 comments and reply comments.[28]

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[19] *See* ITU *Radio Regulations*, Edition of 2004.

[20] *See WRC-03 Final Acts*, Article 25.

[21] This regulation states, "Administrations shall determine whether or not a person seeking a license to operate an amateur station shall demonstrate the ability to send and receive texts in Morse code signals." *WRC-03 Final Acts*, Article 25.5.

[22] *See NPRM*, 20 FCC Rcd at 13256 ¶¶ 17, 18.

[23] 47 C.F.R. § 97.501.

[24] *See NPRM*, 20 FCC Rcd at 13256 ¶¶ 17, 18.

[25] *Id.* at 13258 ¶ 23. FISTS requested that the Commission authorize Technician Class licensees to transmit digital communications on the frequency segments of the HF bands currently authorized to Novice and Technician Plus Class licensees. Coppola requested that the Commission authorize Technician Class licensees operating privileges on the segment of the 10 meter (m) amateur service band currently authorized to Technician Plus Class licensees. The Rightsell-Kholer Petition requested that the Commission authorize Novice, Technician, and Technician Plus Class licensees data communication and telegraphy frequency privileges in the 80, 40, 15, and 10 m amateur service bands, and an expanded frequency segment for voice communications in the 10 m amateur service band, in addition to the privileges currently authorized Technician Plus Class licensees in the HF amateur service bands. Other petitioners more generally requested that the Commission eliminate the difference between the Technician Class and Technician Plus Class licenses by authorizing Technician Class licensees the HF privileges now authorized to Technician Plus Class licensees on the basis that the international requirement for Morse code proficiency had been eliminated.

[26] *Id.* at 13259 ¶ 24.

[27] *Id.*

[28] Appendix B contains a listing of the parties who filed comments and/or reply comments in response to the *NPRM*.

10. On October 10, 2006, the Commission released the *Report and Order* in the *Phone Band Expansion* proceeding. Among other actions, the Commission authorized amateur stations to transmit voice communications on additional frequencies in certain amateur service bands. Specifically, the Commission expanded the 75 m band, which is authorized only for voice and image communications, from 3750-4000 kHz to 3600-4000 kHz, thereby increasing the spectrum that amateur stations could use for voice communications. As a consequence of this expansion of the 75 m band, the 80 m band, which is authorized for radio teletype (RTTY) and data communications, was reduced from 3500-3750 kHz to 3500-3600 kHz. On December 11, 2006, the ARRL filed a petition for partial reconsideration arguing that the 75 m band should not have been expanded below 3635 kHz,[29] in order to protect digital operations in the lower end of the 80 m band.

## III. DISCUSSION

### A. Amateur Radio Operator Licensing Requirements

11. *Background.* The current structure of amateur radio operator license classes, and the requirements for obtaining these licenses, were developed to simplify the license structure for the Amateur Radio Service while maintaining additional frequency privileges as an incentive for amateur radio operators to advance their communications and technical skills.[30] As a licensee advances or "upgrades" to a higher class operator license, the licensee earns more frequency privileges.[31] To qualify for a Technician Class operator license, an applicant must pass a thirty-five question written examination (Element 2) concerning the privileges of this license.[32] The Technician Plus Class operator license required that an applicant pass, in addition to the Element 2 written examination, a five wpm telegraphy examination.[33] To qualify for a General Class operator license, an applicant must pass an additional[34] thirty-five question written examination concerning the privileges of the General Class operator license (Element 3), and a five wpm telegraphy examination (Element 1).[35] To qualify for an Amateur Extra Class operator license, an applicant must pass the examination elements required for a General Class

[29] *See* ARRL Petition for Partial Reconsideration at 4 (filed Dec. 11, 2006) (ARRL Petition). The ARRL also requested that the rule change be stayed pending resolution of its petition for reconsideration. ARRL Petition for Partial Stay of Effective Date of Rule (filed Dec. 11, 2006). In light of our resolution of the ARRL Petition, we dismiss the stay request as moot.

[30] *See License Restructure Report and Order*, 15 FCC Rcd at 322 ¶¶ 12-13.

[31] *See* 47 C.F.R. § 97.301. In the Amateur Radio Service license structure, an individual advances to a higher class of operator license by passing an examination that demonstrates increased telegraphy proficiency and/or more technical expertise than what the individual's present license class requires. There are four examination elements: the three written examinations required for the three classes of operator license, and the telegraphy examination. *See* 47 C.F.R. § 97.503. An examinee must pass different combinations of examination elements to qualify for the various operator licenses.

[32] *See* 47 C.F.R. § 97.503(b)(1). The written examinations consist of multiple-choice questions.

[33] *See* Amendment of the Amateur Service Rules to Change Procedures for Filing an Amateur Service License Application and to Make Other Procedural Changes, *Order*, 9 FCC Rcd 6111 (PRB 1994).

[34] Licensees who previously have passed an examination required for a higher class of operator license receive examination credit for the previously-passed examination. *See* 47 C.F.R. § 97.505.

[35] *See* 47 C.F.R. § 97.503(b)(3).

operator license and an additional fifty question written examination concerning the privileges of this license class (Element 4).[36]

12. In the *License Restructure Report and Order*, the Commission concluded that the public interest would best be served by reducing the telegraphy examination requirement for an amateur radio operator license to the minimum that would satisfy the *Radio Regulations*.[37] As a number of petitioners note, the Commission could not eliminate all telegraphy examination requirements at that time, due to the then-effective *Radio Regulations* requirement that a person demonstrate Morse code proficiency in order to qualify for an amateur radio operator license with transmitting privileges on frequencies below 30 MHz.[38] For this reason, the Commission eliminated, as a licensing requirement, the thirteen wpm and twenty wpm telegraphy examinations, and retained only the minimum telegraphy requirement of five wpm.[39]

13. *Decision.* In the *NPRM*, the Commission proposed to eliminate the requirement that a telegraphy examination be passed for an individual to qualify for either the General or Amateur Extra Class amateur radio operator license.[40] The record reflects a division of views in the amateur radio community regarding this proposal. Many of the comments from individual amateur radio operators support eliminating the telegraphy proficiency requirement. Other comments contend that telegraphy proficiency as a license qualification requirement is not necessary for the General Class operator license, but should be maintained for the Amateur Extra Class operator license. Others argue that the present telegraphy examination requirements should be maintained because any reduction in these requirements will be detrimental to the amateur service while providing no long-term benefits.

14. Based on our review of the record in the proceeding and on consideration of the various comments on this issue, we believe that because the international requirement for telegraphy proficiency has been eliminated, we should treat Morse code telegraphy as we do other communications techniques. In this connection, we note that our Rules do not require individuals to pass a practical examination to demonstrate some degree of proficiency in non-telegraphy communications techniques. Rather, individuals demonstrate knowledge of other communication techniques and technical qualifications by passing written examinations composed of questions that prove that the examinee possesses the operational and technical qualifications required for the privileges authorized by the operator license.[41] We believe, therefore, that written examinations are sufficient to determine whether a person is qualified to be issued an amateur radio operator license. Accordingly, we conclude that the public interest will best be served by eliminating the telegraphy examination requirement as a separate examination requirement in the amateur service. To achieve this result, we will amend Section 97.501 of our Rules to eliminate the requirement that an individual demonstrate five wpm proficiency in telegraphy in order to qualify for a General or Amateur Extra Class operator license.

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[36] *See* 47 C.F.R. § 97.501(a).

[37] *See License Restructure Report and Order*, 15 FCC Rcd at 329-30 ¶ 25.

[38] *See, e.g.*, ARRL Petition at 5; NCI Petition at 3; NCVEC Petition I at 6.

[39] *See License Restructure Report and Order*, 15 FCC Rcd at 329-30 ¶ 25.

[40] *See NPRM*, 20 FCC Rcd at 13256-57 ¶¶ 17, 18.

[41] *See* 47 C.F.R § 97.503.

15. In reaching this decision, we note that one of the fundamental purposes underlying our Part 97 rules is to accommodate amateur radio operators' proven ability to contribute to the advancement of the radio art.[42] The Commission has previously stated that an individual's ability to demonstrate increased Morse code proficiency is not necessarily indicative of his or her ability to contribute to the advancement of the radio art,[43] and the record before us shows that many commenters agree. In the *NPRM*, the Commission expressed its belief that eliminating the telegraphy examination requirement would encourage individuals who are interested in communications technology, or who are able to contribute to the advancement of the radio art, to become amateur radio operators.[44] A number of commenters agree that the Morse code requirement "keeps individuals that would enhance the hobby from getting a license,"[45] and that there is "no relationship between an individual's knowledge of Morse code and that individual's knowledge of radio regulations and practices and skills necessary to operate an amateur station."[46] Other commenters, while not disputing that telegraphy can and will continue to be a way to communicate, point out that amateur radio operators exchange messages using telegraphy only "if they choose to do so,"[47] and that ". . . interest and participation [in use of Morse code] should be voluntary, as it is with other sub-specialties in the amateur service."[48]

16. Another fundamental purpose underlying our Part 97 rules is to enhance the value of the amateur service to the public, particularly with respect to providing emergency communications.[49] Based on the record before us, we are not persuaded to depart from the pending proposal by the argument that telegraphy proficiency should be required because amateur radio stations may provide or assist with emergency communications.[50] The Commission previously addressed the essence of this argument, and concluded that most emergency communication today is performed using voice, data, or video techniques, and that most amateur radio operators who choose to provide emergency communications do so using voice or digital modes of communication because information can be exchanged much faster

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[42] *See* 47 C.F.R § 97.1(b).

[43] *See License Restructure Report and Order*, 15 FCC Rcd at 329 ¶ 25.

[44] *See NPRM*, 20 FCC Rcd at 13249 ¶ 3.

[45] *See* Burt Wizeman Comments at 1; *see also* August J. Miller Comments at 1; Frederick J. St. John Comments at 1; William H. Perkins, Jr. Comments at 1; Verlyn Haahr Comments at 1-2.

[46] *See* Charles Wackerman Comments at 1.

[47] *See* Dean Crow Comments at 1; *see also* Charles Wackerman Comments at 1; Bruce W. Ellinger Comments at 1; Brian Clark Comments at 1.

[48] *See* Gary Pearce Comments at 1; *see also, e.g.*, Todd Buiten WK7L Comment at 1 (Morse code "no longer plays a central role in amateur radio communications"); Charles R. Flanagan Comments at 1 ("the time has passed when knowledge of Morse code was a valid requirement for access to all amateur radio frequencies"); Charles Carter Comment at 1 ("Morse code proficiency is irrelevant."). Many other commenters favor deleting the Morse code requirement for all amateur radio license classes but do not provide a specific reason. *See, e.g.*, H. Allen Robbins Comments at 1; Gene McCalmont Comments at 1; Fred Mott Comments at 1; Brian Burke Comments at 1; Barrie D. Shepherd Comments at 1; Jody Bergman Comments at 1.

[49] *See* 47 C.F.R § 97.1(a).

[50] *See, e.g.*, Garry Rife Comments at 1; Duane Ridenour Comments at 1; Donald L. McClure Comments at 1; Dixie Coutant Comments at 1; Boyd F. Bilger Comments at 1.

using these modes rather than telegraphy.[51] As a result, we find that requiring an individual to demonstrate Morse code proficiency as a license qualification requirement is unrelated to licensees' ability to provide or assist with emergency communications.

17. We conclude that these considerations outweigh arguments that a telegraphy requirement is justified because telegraphy is "historically and traditionally unique,"[52] and that telegraphy ability, as demonstrated by passing a test, has "fundamental and enduring value"[53] to the amateur radio community. We also disagree that a Morse code proficiency testing requirement must be retained "to insure the continued quality pool of amateur radio operators,"[54] or because the telegraphy examination "is the only part of the licensing procedure that cannot be simply memorized."[55] The record is devoid of a demonstrated nexus between Morse code proficiency and on-the-air conduct. As a result, we concur with the observation that "maintaining the code requirement does not purge amateur radio of bad operators. Education and self-policing does."[56] As noted in the record, the claim "that code requirements help eliminate "bad apples" from the radio hobby has not proven correct in the past and is not a viable argument for the present, or future."[57]

18. Finally, we disagree with commenters who support eliminating the telegraphy requirement for the General Class operator license, but advocate retaining it for the Amateur Extra Class operator license.[58] The ARRL and others argue that the telegraphy requirement for the Amateur Extra Class operator license should not be eliminated because the Amateur Extra Class license ought to represent "the ultimate in achievement in both technical and operating skills in Amateur Radio,"[59] and "the number of radio amateurs who have achieved this ultimate license class clearly demonstrates that a 5 words-per-minute telegraphy requirement is not a significant deterrent to those who aspire to it."[60] We nevertheless believe that the public interest is not served by requiring facility in Morse Code when the

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[51] *See License Restructure Report and Order*, 15 FCC Rcd at 334 ¶ 31; *see also, e.g.*, David A. Behar Comments at 1 ("Modern digital protocols and voice modes are far superior to Morse code for public service and emergency communications, and dropping the Morse code requirement will increase the pool of licensed amateur radio operators available for public service and emergency communications.").

[52] *See* Michael J. Sparling Comments at 1; *see also* Martin J. Fenik Comments at 2; Dixie Coutant Comments at 1; David Hoad Comments at 1; Boyd F. Bilger Comments at 1.

[53] *See* Michael J. Sparling Comments at 1.

[54] *See* Martin J. Fenik Comments at 1; *see also, e.g.*, Dennis Gittens Comments at 1; Herman Campbell Comments at 1; Greg Molyneaux Comments at 1 (Morse code "is a way of testing one[']s will and wanting to become a ham radio operator"); D.B. Walter Comments at 1; Chris Murphy Comments at 1 ("the code is somewhat of a filter, not perfect . . . but it does make you earn and value your license"); Calvin Gorce Comments at 1.

[55] *See* Duane Budd Comments at 1.

[56] *See* Dennis N. Rosas Comments at 1; *see also* Woodrow C. Olson Comments at 1.

[57] *See* Eric R. Wolfe Comments at 1; *see also* Doug Younker Comments at 1.

[58] *See, e.g.*, ARRL Comments at 4; John Marks Comments at 1; Mark Wenzel Comments at 1.

[59] *See* ARRL Comments at 4; *see also* Michael J. Sparling Comments at 1.

[60] *See* ARRL Comments at 15; *see also* John Marks Comments at 1; Ignacy Justyna Comments at 1. Other commenters favor retaining the Morse code requirement for the Amateur Extra Class license, but do not explain why. *See, e.g.*, Mark Wenzel Comments at 1.

trend in amateur communications is to use voice and digital technologies for exchanging messages. Rather, we believe that because the international requirement for telegraphy proficiency has been eliminated, we should treat Morse code telegraphy no differently from other amateur service communications techniques. This reasoning applies equally to the General Class and the Amateur Extra Class operator licenses. We are not persuaded that the Amateur Extra Class being the highest license class is a sufficient reason alone to retain a requirement that we conclude is otherwise inappropriate and unnecessary.[61] We also note that our action here does not preclude Amateur Extra Class licensees, or for that matter, other amateur service licensees from pursuing and/or continuing to pursue Morse code proficiency should they so desire.

### B. Operating Privileges

19. *Background.* The Part 97 rules specify operating privileges for the various license classes.[62] Currently, the Novice Class operator license authorizes voice or telegraphy operating privileges in segments of four HF amateur service bands and segments of two amateur service bands above 30 MHz.[63] The Technician Class operator license authorizes all operating privileges available to amateur radio operators on all amateur service frequencies above 30 MHz.[64] An individual who holds a Technician Class operator license and, additionally, has passed a five wpm telegraphy examination is authorized Technician Class operator privileges plus the HF privileges authorized Novice Class licensees.[65] The General Class operator license authorizes the holder all privileges of the Technician Class license plus all emission and frequency privileges in the MF band, and all emission privileges authorized in certain frequency segments of all HF bands that are authorized to amateur radio stations.[66] An Advanced Class operator license authorizes General Class operator privileges plus additional frequency privileges in some of the HF bands that are authorized to amateur radio stations.[67] An Amateur Extra Class operator license authorizes, in addition to General Class privileges, additional frequency segments in four of the HF bands that are authorized to amateur radio stations.[68]

20. In the *NPRM*, the Commission denied several requests that it authorize additional operating privileges, particularly with respect to Technician Class licensees.[69] In denying these requests,

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[61] We disagree with the ARRL that code proficiency is not a disincentive to individuals qualifying for the Amateur Extra Class license. We believe that most individuals who upgrade to the Amateur Extra Class license do not pass a telegraphy examination as part of the upgrade examination, but rather receive examination credit for a previously passed telegraphy examination. *See* 47 C.F.R § 97.505.

[62] *See* 47 C.F.R. § 97.301(a)-(e).

[63] *See* 47 C.F.R. § 97.301(e). These privileges include, among others, authority to control a station transmitting telegraphy emission types in the 80, 40, 15, and 10 m amateur bands, and data and phone (voice) emission types in the 10 m band.

[64] *See* 47 C.F.R. § 97.301(a).

[65] *See* 47 C.F.R. § 97.301(a), (e).

[66] *See* 47 C.F.R. § 97.301(d).

[67] *See* 47 C.F.R. § 97.301(c).

[68] *See* 47 C.F.R. § 97.301(b). Amateur Extra Class licensees are authorized to use all spectrum allocated to the amateur service.

[69] *See NPRM*, 20 FCC Rcd at 13258 ¶ 23.

the Commission noted that these additional frequency bands and emission types in the MF and HF bands are currently authorized to General Class licensees, and that Novice and Technician Plus Class licensees can earn the requested additional privileges by passing only two or one written examinations, respectively.[70]

21. *Decision.* The ARRL and other commenters point out that, if the Morse code requirement is eliminated, there will be a disparity between Technician and Technician Plus operating privileges even though licensees in both classes have passed the same written examination element.[71] Based on our review of our Rules, we agree. Consistent with our decision herein to eliminate the Morse code requirement, we are eliminating this disparity by amending Section 97.301(e) to afford Technician and Technician Plus licensees identical operating privileges.[72] Thereby, licensees in both classes of license will have voice and telegraphy privileges identical to Novice Class licensees in four HF amateur service bands. In eliminating this disparity between Technician and Technician Plus licenses, we are simplifying the amateur service licensing structure and promoting regulatory parity.

### C. Number of Amateur Radio Operator License Classes

22. *Background.* In the *NPRM*, the Commission denied several requests for establishment of a new introductory operator license that would not have a Morse code requirement but would give licensees access to the VHF and UHF amateur bands and limited telegraphy, data and voice privileges in the HF bands.[73] The Commission reasoned that eliminating telegraphy testing, as we do here today, would make the introductory class license superfluous because new entrants could qualify for a General Class license by passing two examination elements.[74] Thereby, the new entrant would be afforded access to significantly more spectrum than contemplated for the introductory class license.

23. *Decision.* In its comments, the ARRL again requests that we establish a new introductory amateur service license.[75] In support of this request, the ARRL contends that the current entry level license class, the Technician Class operator license, "is demonstrably neither attractive to newcomers nor encouraging in terms of retaining the interest of license holders."[76] It also argues that

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[70] *Id.* at ¶ 24.

[71] *See* ARRL Comments at 13; *see also* Mark Wenzel Comments at 1; John Marks Comments at 1.

[72] *See* ARRL Comments at 13. We note that because Technician Class licensees licensed before March 21, 1987 passed Element 3, the General Class written examination, rather than Element 2, the Technician Class written examination element, Technician Class licensees licensed before March 21, 1987 will continue to receive examination credit for Element 3 when they upgrade to a General Class operator license. *See* 47 C.F.R. § 97.505(a)(8). Verification of such licensing may be requested by sending 1987 licensing information to FCC, 1270 Fairfield Road, Gettysburg, PA 17325-7245, ATTN: Amateur Radio License Verification Request.

[73] *See NPRM*, 20 FCC Rcd at 13261 ¶¶ 26-30. Specifically, the Commission denied a request from the ARRL that it replace the current entry-level operator license, the Technician Class license, with a new entry-level "Novice" Class operator license that would include VHF and UHF privileges, and limited HF telegraphy, data, and voice privileges without requiring a Morse code test and a request from the NCVEC that we establish a new "Communicator Class" license as the new introductory amateur service operator license. *See id.* at 13261 ¶ 27.

[74] Similarly, current Technician Class licensees may obtain additional operating privileges by passing one examination element.

[75] *See* ARRL Comments at 2-3, 10-13.

[76] *Id.* at 7-8.

elimination of the telegraphy examination as a requirement for the General Class license "will likely result in a significant increase in license upgrades from those Technician Class licensees who have remained involved in amateur radio" to the General and Amateur Extra Class operator licenses.[77] However, the ARRL asserts that eliminating the requirement for telegraphy proficiency, "without more, will have no effect on newcomers to the amateur service" and, therefore, will not result in "sustained growth" in the number of amateur service licensees.[78] Other commenters support "some form of entry level HF license category parallel to the Novice-Technician level"[79] or a "learner's class of license that is suitable for the classroom."[80] They assert, for example, that "the nation needs an entry class license whereby younger children can enter the amateur service and become interested in communications and engineering."[81] Current examinations for amateur radio licenses ensure, at a minimum, that the applicant understands the Commission's rules for the service and the fundamental principles of radio communication. None of the proponents of an introductory level license has shown how an introductory level license examination would achieve an equivalent understanding of the rules and of radio communications fundamentals. Further, the record is devoid of sufficient objective and quantifiable information that would cause us to conclude that the current examinations and/or the current FCC Amateur Radio Service license structure are a significant barrier to persons seeking an amateur radio license. Moreover, our action today in eliminating the Morse code proficiency test undercuts one of the primary purported advantages of a "code-free" introductory class of license. Accordingly, we believe that the current licensing structure, as modified herein, provides significant and sufficient incentives for participation in the amateur radio service, and based on the record before us at this time, we decline to establish a new introductory class of amateur radio license.

24. In light of the decisions we have reached in this proceeding and in the *Phone Band Expansion* proceeding,[82] we conclude that no additional changes to the privileges of the Technician Class operator license are needed at this time. As discussed above, the rules adopted herein grant Technician Class licensees additional operating privileges in four HF bands, which at least partially addresses commenters' desire for an introductory license class that allows licensees to communicate over a wider geographic area. We believe, therefore, that the ARRL's concerns have been substantially addressed by the actions we have taken.

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[77] *Id.* at 11-12. Additionally, we are concerned that the ARRL has provided no data that shows that authorizing Technician Class licensees additional operating privileges would have the effect it intends, *i.e.*, would result in sustained growth in the number of amateur service licensees. Rather, we agree with Mr. Byers that growth in the number of amateur service licensees is affected by potential operators being "more attracted to noise-free communication plus vivid color images so easily obtainable with computer internet connection than radio operation," and other factors such as other avocation activities available to individuals and the difficulty an individual encounters in pursuing these activities. *See* Stanley C. Byers Comments at 1.

[78] *See* ARRL Comments at 11-12.

[79] *See* Gary Irwin Sklar Comments at 1.

[80] *See* John Marks Comments at 1.

[81] *See* David M. Aronovitz Comments at 1; *see also* Gary Irwin Sklar Comments at 1.

[82] *See* Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Report and Order*, WT Docket No. 04-140, 21 FCC Rcd 11643 (2006) (*Phone Band Expansion*).

25. Additionally, we are declining ARRL's request that Novice and Technician Class licensees be given voice and image[83] privileges in certain segments of the 80, 40, 15 and 10 m bands.[84] Our action today giving Technician Class licensees the same privileges as Technician Plus Class licensees does effectively provide some of the relief ARRL seeks because Technician class licensees now have voice and digital privileges in the 10 m HF band. However, we are concerned that giving Novice and Technician class licensees voice privileges in the other HF bands would be a disincentive for these licensees to improve their knowledge and skills and attain a higher class license. Passing the thirty-five question written examination for the intermediate class of license -- the General Class[85] -- is well within the capability of most, if not all, Technician and Technician Plus licensees, particularly given the study guides and other aids available from, among others, the ARRL. However, providing the complete relief ARRL requests and removing most of the "reward" for passing the examination -- access to other HF bands -- would likewise remove the incentive to do so and would be inconsistent with the Commission's rationale for establishing different operator license classes. We therefore are not persuaded that we should make further changes in the operating privileges attendant on the current license classes given the record before us.

### D. Conforming Rule Changes

#### 1. Automatically controlled digital stations.

26. *Background.* In the *Phone Band Expansion* proceeding, the Commission authorized amateur stations to transmit voice communications on additional frequencies in certain amateur service bands.[86] Specifically, the Commission expanded the 75 meter (m) band, which is authorized only for voice and image communications,[87] from 3750-4000 kHz to 3600-4000 kHz, thereby increasing the spectrum that amateur stations could use for voice communications. The Commission took this action because the record in that proceeding indicated that "increasing the amount of spectrum for voice communications will reduce interference among stations using voice communications, thereby benefiting all licensees, and that authorizing more spectrum for voice communications will more closely reflect licensees' operating preferences, thereby resulting in more efficient use of amateur service spectrum."[88] As a consequence of this expansion of the 75 m band, the 80 m band, which is authorized for radio teletype (RTTY) and data communications,[89] was reduced from 3500-3750 kHz to 3500-3600 kHz. Section 97.221(b) of the Commission's Rules, however, provides that a station may be automatically controlled while transmitting a RTTY or data emission on, among other frequency segments, 3620-3635 kHz.[90] Because 3620-3635

[83] Image emissions are facsimile and television emissions having certain emission designators. *See* 47 C.F.R. § 97.3(c)(3).

[84] The requested privileges include telegraphy and data emission privileges in certain segments of the 80, 40, 15, and 10 m amateur bands, and voice and image emission privileges in other segments of the same bands, in addition to the privileges the Technician Class license presently authorizes.

[85] *See* 47 C.F.R. § 97.501.

[86] *Phone Band Expansion R&O*, 21 FCC Rcd at 11650-51 ¶ 11.

[87] *See* 47 C.F.R. § 97.305(c).

[88] *See Phone Band Expansion R&O*, 21 FCC Rcd at 11650 ¶ 10.

[89] *See* 47 C.F.R. § 97.305(c).

[90] *See* 47 C.F.R. § 97.221(b).

kHz will no longer be authorized for RTTY and data communications due to its inclusion in the expanded 75 m band, the failure to specify an alternative frequency segment in the 80 m band for automatically controlled stations transmitting a RTTY or data emission would prevent amateur service licensees from using any portion of the 80 m band for such stations.

27. The ARRL argues that we should protect automatically controlled stations transmitting a RTTY or data emission in the 80 m band by expanding the 75 m band only to 3635-4000 kHz, rather than 3600-4000 kHz.[91] We conclude that the expansion of the 75 m band should not be so limited, because of the need, discussed above, for more spectrum for voice communications. We agree with the ARRL, however, that the Commission did not intend to reduce the amount of spectrum available for automatically controlled digital stations.[92] To correct this unintended consequence of the rules adopted in the *Phone Band Expansion* proceeding, we amend Section 97.221(b) to again authorize a segment of the 80 m band to be used for automatically controlled digital stations. Specifically, we authorize these stations to transmit in the 3585-3600 kHz frequency segment. We believe that because this frequency segment is very near the 3620-3635 kHz frequency segment now authorized for RTTY and data communications and because licensees generally have frequency-agile equipment, they will be able to shift their operations to this frequency segment with minimal difficulty. We also note that this frequency segment, like the previously authorized frequency segment, is in the band segment authorized for RTTY and data communications, and that it provides the same amount of spectrum as was previously authorized for automatically controlled digital stations in the 80 m band.

### 2. Reciprocal operation by CEPT licensees

28. *Background.* In 1998, the Commission amended its Rules to allow a person who has a European Conference of Postal and Telecommunications Administrations (CEPT) "radio-amateur license . . . issued by the country of which the person is a citizen," and who satisfies other requirements in the Commission's rules,[93] to be the control operator of an amateur radio station at a location where the Commission regulates the amateur service.[94] Section 97.301(a) currently authorizes a station controlled by a person who has been granted a CEPT radio-amateur license of any class the privileges authorized to Technician Class amateur service licensees.[95] Section 97.301(b) authorizes a station controlled by a person who has been granted a CEPT radio-amateur license Class 1 the privileges we authorize Amateur

[91] *See* ARRL Petition at 4.

[92] *See id.* at 6 (citing Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Notice of Proposed Rulemaking and Order*, WT Docket No. 04-140, 19 FCC Rcd 7293, 7300 ¶ 11 (2004)). As the ARRL notes, the *Phone Band Expansion R&O* did not delete 3620-3635 kHz from the frequencies on which Section 97.221(b) authorizes operation of automatically controlled digital stations, which further indicates that the Commission did not intend to reduce the spectrum available for such operations. *See* ARRL Petition at 10.

[93] *See* 47 C.F.R § 97.5(d).

[94] *See* Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21103 (1998); *see also* 47 C.F.R. § 97.5(d).

[95] *See* 47 C.F.R. § 97.301(a).

Extra Class licensees.[96] In 2003, CEPT removed the then-mandatory Morse code requirement for amateur service licensing and reduced the number of amateur radio license classes from two to one.[97]

29. To conform our rules to reflect that CEPT has reduced the number of amateur classes from two to one, we will amend Section 97.301[98] to authorize Amateur Extra Class privileges to all individuals who have been issued a CEPT radio-amateur license by their country of citizenship, and who satisfy other requirements in the Commission's rules.[99] The "good cause" exception to the notice and comment provisions of the Administrative Procedure Act applies to our amendment of Section 97.301.[100] The United States is a signatory to the CEPT agreement and we thus must give effect to CEPT's establishing a single license class. Given that obligation, it is unnecessary -- and also would be unproductive -- to provide notice and receive comment in advance of taking this action.

## IV. CONCLUSION

30. In summary, we believe that the public interest will be served by revising the amateur service rules to eliminate the telegraphy testing requirement. We also believe that these rule changes will allow amateur service licensees to better fulfill the purpose of the amateur service and will enhance the usefulness of the amateur service to the public and licensees.

## V. PROCEDURAL MATTERS

### A. Final and Supplementary Final Regulatory Flexibility Certifications.

31. The Regulatory Flexibility Act of 1980, as amended (RFA),[101] requires a regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[102] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[103]

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[96] *See* 47 C.F.R. § 97.301(b).

[97] *See* European Conference of Postal and Telecommunications Administrations (CEPT) Recommendation T/R 61-01 (Nice 1985, Paris 1992, August 1992, Nicosia 2003).

[98] 47 C.F.R. § 97.301.

[99] *See* 47 C.F.R. § 97.5(d). These requirements include, among other things, that the person must not be a resident alien or citizen of the United States, regardless of any other citizenship also held, and that the person not hold an FCC-issued amateur operator license or be a prior amateur service licensee whose FCC-issued license was revoked, suspended and relicensing has not taken place, or surrendered for cancellation following notice of revocation, suspension or monetary forfeiture proceedings.

[100] *See* 5 U.S.C. § 553(b)(3)(B). The Administrative Procedure Act allows an agency to promulgate rules without notice and comment "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." *Id.*

[101] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601– 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[102] *See* 5 U.S.C. § 605(b).

[103] *See* 5 U.S.C. § 601(6).

In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[104] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[105]

32. In this *Report and Order and Order on Reconsideration*, we amend the Rules that specify the examination requirements for an amateur service operator license, and we provide additional spectrum for operation of automatically controlled digital stations. The amended rules apply exclusively to individuals who are or desire to become licensees in the Amateur Radio Service. Such amendments are in the public interest because they will more closely align the Commission's rules with the international *Radio Regulations* applicable to the amateur service and will allow more individuals to contribute to the advancement of the radio art by becoming amateur radio operators. The rule changes do not result in any mandatory change in manufactured amateur radio equipment. Therefore, we certify that the rules reflected in this *Report and Order and Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order and Order on Reconsideration*, including a copy of these Final and Supplementary Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the SBA.[106] This certification will also be published in the Federal Register.[107]

### B. Paperwork Reduction Act of 1995 Analysis

33. This *Report and Order and Order on Reconsideration* has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and found to contain no information collection requirement. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

### C. Congressional Review Act

34. The Commission will send a copy of this *Report and Order and Order on Reconsideration* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

### D. Alternative Formats

35. To request materials in alternative formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to <FCC504@fcc.gov> or call the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *Report and Order and Order on Reconsideration* also may be downloaded from the Commission's web site at <http://www.fcc.gov/>.

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[104] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[105] *See* 15 U.S.C. § 632.

[106] *See* 5 U.S.C. § 605(b).

[107] *See id.*

36. For further information, contact William T. Cross, Mobility Division, Wireless Telecommunications Bureau, (202) 418-0691, or TTY (202) 418-7233.

## VI. ORDERING CLAUSES

37. IT IS ORDERED that, pursuant to Sections 4(i), 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i), 303(f), 303(r) and 332, this *Report and Order and Order on Reconsideration* IS ADOPTED.

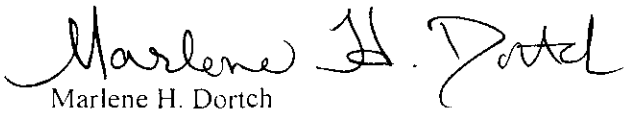
38. IT IS FURTHER ORDERED that the Petition for Partial Reconsideration filed by the American Radio Relay League, Inc. on December 11, 2006 is GRANTED to the extent indicated above, and otherwise DENIED.

39. IT IS FURTHER ORDERED that the Petition for Partial Stay of Effective Date of Rule filed by the American Radio Relay League, Inc. on December 11, 2006 is DISMISSED AS MOOT.

40. IT IS FURTHER ORDERED that Part 97 of the Commission's Rules IS AMENDED as specified in Appendix A, effective **[30 days after publication in the Federal Register]**.

41. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final and Supplementary Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

## APPENDIX A

### Final rules

Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 97 - Amateur Radio Service

The authority citation for part 97 continues to read as follows:

**AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.**

1. Section 97.3 is amended by revising paragraph (a)(12) to read as follows:

**§ 97.3 Definitions.**

(a) * * *

(12) *CEPT radio amateur license.* A license issued by a country belonging to the European Conference of Postal and Telecommunications Administrations (CEPT) that has adopted Recommendation T/R 61-01 (Nice 1985, Paris 1992, Nicosia 2003).

* * * * *

2. Section 97.221 is amended by revising paragraph (b) to read as follows:

**§ 97.221 Automatically controlled digital station.**

(a) ***

(b) A station may be automatically controlled while transmitting a RTTY or data emission on the 6 m or shorter wavelength bands, and on the 28.120–28.189 MHz, 24.925–24.930 MHz, 21.090–21.100 MHz, 18.105–18.110 MHz, 14.0950–14.0995 MHz, 14.1005–14.112 MHz, 10.140–10.150 MHz, 7.100–7.105 MHz, or 3.585–3.600 MHz segments.

* * * * *

3. Section 97.301 is amended by revising paragraphs (a), (b) and (e) to read as follows:

**§ 97.301 Authorized frequency bands.**

* * * * *

(a) For a station having a control operator who has been granted a Technician, Technician Plus, General, Advanced, or Amateur Extra Class operator license, who holds a CEPT radio amateur license, or who holds any class of IARP:

* * *

(b) For a station having a control operator who has been granted an Amateur Extra Class operator license, who holds a CEPT radio amateur license, or who holds a Class 1 IARP license:

* * *

(c) * * *

(d) * * *

(e) For a station having a control operator who has been granted an operator license of Novice Class, Technician Class, or Technician Plus Class:

* * * * *

4. Section 97.501 is amended by revising paragraph (a) and (b) to read as follows:

**§ 97.501 Qualifying for an amateur operator license.**

* * * * *

(a) Amateur Extra Class operator: Elements 2, 3, and 4;

(b) General Class operator: Elements 2 and 3;

* * * * *

5. Section 97.503 is amended by removing paragraph (a), redesignating paragraph (b) as an undesignated introductory paragraph, and redesignating paragraphs (b)(1)-(3) as paragraphs (a)-(c), respectively.

6. Section 97.505 is amended by removing paragraphs (a)(4), (a)(5), (a)(7), and (a)(9), redesignating paragraphs (a)(6) as (a)(5) and (a)(8) as (a)(4), and revising paragraphs (a)(1)-(a)(3) to read as follows:

**§ 97.505 Element credit.**

(a) * * * * *

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 2 and 3.

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 2 and 3.

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician or Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license grant: Element 2.

* * * * *

7. Section 97.507 is amended by removing paragraph (d) and revising paragraphs (a), (a)(2), and (c) to read as follows:

**§ 97.507 Preparing an examination.**

(a) Each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

(1) * * *

(2) Element 2: Advanced, General, or Technician Plus Class operators.

(b) * * * * *

(c) Each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

8. Section 97.509 is amended by removing paragraph (g), redesignating paragraphs (h)-(m) as paragraphs (g)-(l) respectively, and revising paragraph (f) to read as follows:

**§ 97.509 Administering VE requirements.**

* * * * *

(f) No examination that has been compromised shall be administered to any examinee. The same question set may not be re-administered to the same examinee.

* * *

## APPENDIX B

### List of commenters

A. J. Waters III
A Paul Miner, N7JTL
Robert Patzlaff
Aaron Bentley
Aaron O'Donnell
Acevedo Eladio, WP3MW
Adair Deon Winter
Adam Dickinson, KE7DXP
Adam Glickman
Adam M. Farson
Adam Tarpley
Adin Miller
Adolf Burggraff
A.J. Bernardi
Akin Brill
Alan Adler
Alan C. Marshall
Alan D. Hatfield
Alan Darling
Alan G. Corey
Alan Huff
Alan Knabe
Alan L. Waller, K3TKJ
Alan L. Anderson
Alan Lefor
Alan M. Christman
Alan M. Maslin, N3EA
Alan Moffet
Alan Rabin
Alan T. Whatley
Alan W. Dye
Alan Wolfe
Alanna Adler Conder K4AAC
Albert F. Moreschi II
Albert H. Kirchner, III
Albert J. Ernest
Albert J. Schramm, W3MIV
Albert J. Silver
Albert L. Sinopoli, P.E.
Albert O. Ewing
Albert T. Lenny
Alcangel Viera, KB2NNF
Alejandro Hernandez
Alex Calabrese
Alex V. Flinsch, AB2RC
Alexander Berger
Alexander G. Carver
Alexander Krauska
Alfred LaPeter, Jr.
Alice G. Burroughs
Allan Avnet
Allan E. Hobron
Allan F. Lindner
Allan J. DeBlasio
Allan Kruger
Allan L. Eckman
Allan R. Pelletier
Allan W. Russell
Allan Young
Allen Bare Jr
Allen J. Zimmerman, K3WGR
Allen Kenny
Allen Moulder, KQ6IY
Allen R. Watkins
Allen Walker
Almon C. Turner
Alt Robert Jr.
Alton Churchill
Alton E. McConnell III, NU8L
Alton Higgins
Alun L. Palmer, N3KIP
Alvie B. Stiefer, KD5NHY
Alvin Eugene Dionizio
Alvin G. Alexander
Alvin Riesbeck
American Radio Relay League
Amir Findling
Andre' Munoz
Andre Robatino, KS1W
Andrea Cook
Andrew C. Austin
Andrew Crouthamel
Andrew Jay Nabholz
Andrew Kayton
Andrew Lokken
Andrew McGinley
Andrew Pepper
Andrew R. Ellis
Andrew Rosengarten
Andrew Schmidt
Andrew Theismann
Andrew W. Bonnot
Andrew W. Hampton
Andrey Endri Stoev
Andy Dlinn, WA2FFY
Angel L. Rodriguez, KE4THL
Anne Fanelli
Anne Greer
Anthony B. Van Hesteren
Anthony C. Cash
Anthony Cinelli
Anthony F. Japha
Anthony Good, K3NG
Anthony J. Brignole III
Anthony J. Cioffi
Anthony J. Oresteen
Anthony J. Ruffini
Anthony M. Doriguzzi
Anthony Phoenix
Anthony R. Gargano
Anthony York
Anthony Zambino
Archie Hamm
Archie R. Willis
Arjan Bok
Armin F. Doneis, Jr.
Armond Noble
Arthur A. Ellis
Arthur Craigmill
Arthur J. Roberts
Arthur L. Weiss
Arthur Lekstutis
Arthur R. Lewis
Arthur S. Gillespie,Jr., K4TP
Arthur T. Nickel, K0ART
Arthur T. Staniec
Arthur Wolfman
Arvid M. Monson
Ashley Geelan
Aubrey H. Saxe
Audie L. Kennedy
August J Miller, KD7VRU
Avery J. Wright, KD4GBA
Boylin
Peter Treml, K8PT
B. Rech
B. Scott Andersen
Barbara Flanagan
Barbara Jackson
Barbara L. Nixon, KB3LDM
Barbara Lee Steward
Barbara Levow
Barbara Olson-Arenz
Barclay J. Tullis
Barrie Arnett, N7ATC
Barrie D. Shepherd
Barron A. Moreland III
Barry Bettman
Barry David Stamper
Barry E. Butz, N8PPF
Barry E. Lewis
Barry Hiddema
Barry N. Kutner, M.D.
Barry P. Rummel
Barry Parker
Barry S. Newberger
Barry Selk
Bart Hamilton
Beau Lundmark
Bela W. Lindenfeld
Ben Cook
Ben F. Worrell
Ben G. Nichols III
Ben Hasse
Ben Johnson

Benedict Nardi
Benjamin E. Manley
Benjamin Franske
Benjamin S. Gelb
Benson J. Owens, K5KV
Benson Scott M.D., AE5V
Benson Wills
Bernard Basel
Bernard Fineberg
Bernard K. Skoch
Bernie Wimmers
Bertus Weijers
Betty A. Ballard
Beverly Hoff
Bill E. Barry
Bill Green
Bill Rowan
Bill Sohl, K2UNK
Bill Vargas
Bill Walch
Bill Houston
Billy R. Fuller
Billy E. Whitehead Jr
Billy R. Jones
Bindy Boylin
Blaine Nay
Blane Wilson
Bob Adams
Bob Kruppa
Bob Mann
Bob Martin
Bob McLaughlin, KE7DEN
Bob Richardson
Bob Smith
Bobby Atkinson
Bonnie A. Brown
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